

REMARKS

Claims 1-3 and 6-10 are pending in the present application.

PRIOR ART REJECTIONS

A. Claims 1-3, 6, 7 and 10

Claims 1-3, 6, 7 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Christian (U.S. Patent 6,421,462) in view of Parulski (U.S. Patent 5,914,748). This rejection is traversed.

Previously, claims 1-3, 6, 7 and 10 were rejected over Ahmad (U.S. Patent No. 6,532,022) over Parulski. The Examiner has substituted the Christian reference for the Ahmad reference.

Regarding claim 1, the Examiner asserts that Christian discloses all of the claim elements except taking a first image when a predetermined period of time is measured by a time measuring portion and taking a second image when a second period of time is measured by a time measuring portion. The Examiner then asserts that Parulski teaches to take an image including a background only and an image including the background and an object separately and automatically after the shutter button is pressed. The Examiner concludes that it would have been obvious to modify Christian to include this

alleged feature of Parulski in order to allow the photographer to not intervene in the apparatus during the capture sessions.

Applicant submits that it would not have been obvious to combine the mentioned feature of Parulski with Christian because there is no motivation to do so. Christian is directed to track a person through a succession of video images (see column 8, lines 37-40). As shown in Fig. 2, the image takes the form of a video sequence of ordered frames 35 comprising a plurality of frames 34 that can be produced at a rate of 30 frames per second (see Fig. 2 and column 8, lines 11-14). The video sequence of ordered frames 35 are input to the image processing system 16 (see Fig. 1 and column 8, lines 22-24).

Applicant submits that it would not have been obvious to combine the mentioned feature of Parulski with Christian because there is no motivation to do so. The Examiner asserts that it would have been obvious to modify Christian to take an image including a background only and an image including the background and an object separately and automatically after a shutter button is pressed, as allegedly taught by Parulski, in order to allow the photographer to not intervene in the apparatus during the capture sessions. However, as mentioned above, Christian is directed to track a person through a succession of video images. Therefore, there is no use for taking images at predetermined times after a shutter button is pressed. Therefore, one skilled in the art would not have combined this alleged feature of Parulski with the device of Christian. Thus, the Examiner's relied on motivation for this combination is

not proper. Therefore, the Examiner's combination of Parulski with Christian is the result of hindsight gleaned from review of the present invention, which is not allowed. Accordingly, the present invention would not have been obvious over Christian in view of Parulski. Thus, the rejection of claims 1-3, 6, 7 and 10 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Further, in column 8, lines 55-67 of Christian discloses that when a prescribed period of time elapses, a background image, which the Examiner may allege corresponds to the claimed "first image," is updated with an image obtained by averaging a plurality of source images (e.g., the last ten captured source images). In Christian, this technique is referred to as "time-averaged background image updating scheme or scenario." In contrast, in the present invention, the first image is updated by using an image of a region other than the object region of the second image. That is, Christian is silent with respect to the claimed scheme in which a background image when only a single source image (the image used for updating the background image; the claimed "second image") is taken.

Secondly, Christian does not disclose or suggest the timing when the source image and the background image are taken. In claim 1 of the present application, the claimed "output selecting portion" outputs one of the first and second images when a first predetermined period of time elapses after the shutter button is pressed, and then outputs the other of the first and second images when a second predetermined period of time elapses. That is, the

present invention takes both the first and second images after respective periods in response to the single trigger of pressing the shutter button.

Accordingly, the present invention is suitable for avoiding misalignment of the background images of the first and second images due to camera movement when the shutter button is pressed. However, Christian does not address this concern. Therefore, the combination of Christian and Parulski would not have been obvious.

B. Claims 8 and 9

Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Christian and Parulski and further in view of U.S. Patent 5,267,333 (Aono). This rejection is traversed.

Aono fails to make up for the above-noted deficiencies of Christian and Parulski. Therefore, because the combination of Christian, Parulski and Aono does not form the invention defined by claims 8 and 9, the rejection of claims 8 and 9 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Based on the foregoing, Applicant submits that the present application is in condition for allowance and allowance is respectfully solicited. If the Examiner believes that any of the outstanding issues could be resolved by a telephone conference, Applicant respectfully requests the Examiner to contact the undersigned at the telephone number listed below.

Response Under 37 C.F.R. § 1.111

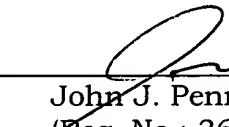
U.S.S.N.: 09/619,917

Page 6 of 6

Applicant believes that no additional fees are due for the subject application. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. 04-1105.

Respectfully Submitted,

Date: May 8, 2006
Customer No.: 21874


John J. Penny, Jr.

(Reg. No.: 36,984)

EDWARDS ANGELL PALMER &
DODGE, LLP
P.O. Box 55874
Boston, Ma 02205
Tel: (617) 517-5549
Fax: (617) 439-4170

543823